

Appl. No. 10/667,405
Amtd. Dated 09 07, 2004
Reply to Office Action of 08 06, 2004

REMARKS

Applicant gratefully acknowledges the thorough Examination to date and has made an effort to fully respond to all the issues raised by the Examiner. Reconsideration of the application is respectfully solicited.

In the Specification

In the Specification, Applicant has amended paragraphs [0009], [0010], and [0011] to more clearly define the present invention.

The Applicant respectfully submits that the amendments are inferred by the teachings of the original disclosure. It would have been obvious to the skilled artisan, in view of Figures 1 through 4 as originally filed, that the cover is constructed and arranged to enclose the container and to prevent a small animal from displacing the cover relative the container.

With regard to the amendments, all three aspects described in the Specification as amended – 1) the weight of the grid in accordance with the cover shown in FIGURES 1 and 6, 2) the four side walls shown FIGURES 2, 3, and 4, and 3) the hinges and locking mechanism shown in FIGURE 5 – form part of the construction and arrangement of the cover to prevent displacement of the cover relative to the container. To further highlight the point, the Examiner's attention is drawn to the following wording in amended paragraphs [0019]:

"It should be noted that in each of the three aspects of the present invention, the cover 5 is constructed and arranged to enclose the container 10 and to prevent a small animal from displacing the cover 5 relative to the container 10 when the cover encloses the container, as shown in FIGURES 1 through 6. Thus, the cover 5 may not require a frame 25, as shown in FIGURE 1. As shown in FIGURE 6, the cover is constructed such that the weight of the grid surface 30 is sufficient to prevent the small animal from displacing the cover 5 relative to the container 10."

As all three aspects are believed to be "equivalent" as defined under the legal doctrine of equivalence. As each aspect described in the Specification forms part of the same invention, the Applicant respectfully submits that all of the aspects described disclose a single patentably

Appl. No. 10/667,405
Amdt. Dated 09 07, 2004
Reply to Office Action of 08 06, 2004

distinct species. Finally, the Applicant believes that no new matter has been added to the Specification as detailed in the above remarks.

The Applicant has deleted paragraphs [0010] and [0011] to conform the statements of invention with the only independent claim remaining, currently amended Claim 10.

In the Claims

Applicant has deleted Claims 1 through 9 and Claims 13 through 1 to 23 of the application.

Claim 10 is currently amended to better define the inventive subject matter as detailed in the Specification. The scope of protection sought in Claim 10 and each of the dependent Claims 11 through 12 and 19 through 23 are supported by the Specification. Claim 10 as currently amended reads as follows:

"A cover for use with a container having suitable means for growing the at least one plant variety accessible to animals for grazing, the cover constructed and arranged to enclose the container and to prevent animals from displacing the cover relative to the container when enclosed, the cover having a plurality of openings being dimensioned to form a passageway for the at least one plant variety growing through the plurality of openings while the cover preventing a limb from an animal from entering through any one of the plurality of openings."

[underlined for emphasis]

The Applicant has amended Claim 10 to provide for the construction and arrangement of the cover relative to the container as detailed in paragraph [00019]. Thus, Claim 10 and further dependent Claims 11 through 12 and 19 through 23 are directed toward a single patentably distinct species

In the Abstract

Appl. No. 10/667,405
Amdt. Dated 09 07, 2004
Reply to Office Action of 08 06, 2004

Applicant has amended the Abstract to more clearly define the present invention for which patent protection is sought and to conform with amendments made to the Specification and the Claims. No new matter has been added to the Abstract.

Election of Species

The Applicant respectfully submits that the election of species requirement has been overcome by way of amendment and the above made remarks. With respect to the plurality of aspects shown in the Drawings, each of the Figures 1 through 6 illustrate the same invention.

Conclusion

Applicant respectfully submits that the election of species requirement has been overcome. Applicant confirms that no new matter has been added to the subject application. Accordingly, reconsideration and allowance of this application is respectfully solicited.

Should any further fees or payments be necessary for entry of this amendment and further prosecution of this application, the undersigned hereby authorizes the Commissioner to debit and/or credit our Deposit Account No. 16-0600.

Respectfully Submitted,
John E. White

By:

Dennis S.K. Leung
Reg. No. 47,325

C/O SHAPIRO COHEN
P.O. Box 3440
Station D
Ottawa, ON K1P 6P1
CANADA

Telephone: (613)232-5300

DSKL/NR:ms

Page 13 of 13